

In the Matter of the Appeal by Jason Kap	)	
and Eric Medeiros of the City of Redmond	)	FILE NO. L04000449
Determination of Nonsignificance for the	)	
Transportation Master Plan	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
	)	
	)	

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## I. FINDINGS

### A. NATURE OF THE HEARING AND PARTIES

1. On October 19, 2004, the City of Redmond adopted Ordinance 2230 updating the Transportation Element of the Redmond Comprehensive Plan. The updated Transportation Element calls for the development and maintenance of a Transportation Master Plan (TMP) containing “the specific features comprising Redmond’s transportation system, including the programs, projects, and services necessary to support planned land uses.”

2. A draft TMP was developed by a team of staff and consultants, who worked on the project throughout 2004. Staff involved in developing the draft TMP came from both the Planning and Public Works Departments. A number of well-attended community workshops, meetings and events were held as part of developing the draft TMP. In January 2005, the draft TMP was ready to begin the City’s formal review process.

3. An environmental checklist for the draft TMP was prepared by Terence C. Marpert, Principal Planner with the Redmond Planning Department. On February 16, 2005, the checklist was signed by Kurt Seemann, Senior Engineer with the Redmond Public Works Department. On that date Mr. Seemann also signed a General Application Form for filing with the permit center in order to formally commence the review and approval process for the TMP. The General Application Form and the environmental checklist were filed with the Permit Center on February 22, 2005.

4. Adoption of the TMP is subject to a Type VI review process under RCDG 20F.30.55. The Type VI process requires review and recommendation by the Redmond Planning Commission and review and approval by the Redmond City Council.

5. After the checklist and application form for the TMP were filed, Mr. Marpert reviewed the same and proceeded to draft a SEPA threshold Determination of Nonsignificance (DNS). Mr. Marpert then reviewed the draft DNS with Roberta Lewandowski, the Redmond Planning Director, and with William Campbell, the City Engineer. The City’s Technical Committee, consisting of the Planning Director and the

Public Works Director, acts as the City's SEPA Responsible Official. At the time the DNS was reviewed, the Public Works Director was absent and Mr. Campbell was acting in his stead. The DNS was signed by Ms. Lewandowski and Mr. Campbell and issued on March 4, 2005.

6. On April 1, 2005, Eric Medeiros and Jason Kap filed an appeal of the DNS. One of the issues raised by Mr. Medeiros and Mr. Kap was that the City had not published the DNS as required by SEPA and the City's Code. On April 21, 2005, the City caused the DNS to be published in *The Seattle Times*. On May 19, 2005, Mr. Medeiros and Mr. Kap filed a second appeal of the published DNS.

7. Difficulties in meshing the schedules of the various parties involved in the appeal resulted in the appeal hearing being opened before the Redmond City Council on August 9, 2005. The hearing was subsequently continued on August 23 and September 1, 2005, at which time testimony was completed.

8. At the outset of the hearing, councilmembers made disclosures concerning any *ex parte* contacts or other facts relevant to application of the appearance of fairness doctrine. No appearance of fairness challenge was raised by any party to the proceedings.

9. Also at the outset of the hearing, the Council heard a motion brought by the appellants, Mr. Kap and Mr. Medeiros, to have this matter heard by the Redmond Hearing Examiner. For the reasons set forth in the conclusions below, the Council denied that motion.

10. The following witnesses were called by the appellants and testified under oath at the hearing: Terence C. Marpert, Kurt Seemann, Stephen Speidel, Robert W. Thorpe, Robert Bernstein, Eric Medeiros, and Jason Kap. The City staff called the following witnesses, who also testified under oath: Terence C. Marpert, Kurt Seemann, and Donald Cairns.

11. J. Richard Aramburu represented the appellants in the proceedings. James E. Haney of the City Attorney's Office represented the City staff. Robin Jenkinson, the Kirkland City Attorney, acted as independent legal counsel for the City Council.

12. The Council deliberated on September 6, 2005 and, at the conclusion of such deliberations, determined to deny the appeal for the reasons set forth hereafter in these findings and conclusions.

## **B. FINDINGS REGARDING JURISDICTION**

13. The appellants argued that this appeal should be heard by the Redmond Hearing Examiner. The appellants based their argument on Redmond Community Development Guide (RCDG) Sections 20F.20.40-180(1) and 20F.30.60. Section 20F.20.40-180(1) provides that SEPA appeals will follow "the procedures set forth in

RCDG 20F.30.60 Appeals.” RCDG 20F.30.60 currently governs historic landmark designations and establishes a Type VII procedure for processing those matters. RCDG 20F.30.60-080 provides that decisions of the Redmond Historic Landmark Commission may be appealed to the Redmond Hearing Examiner and that decisions by the Redmond Hearing Examiner on such appeals may be appealed to the City Council. The appellants argued that this procedure should apply to their SEPA appeal.

14. Section 20F.20.40-180 was adopted as part of Ordinance 2118 of the City of Redmond on February 14, 2002. At that time, Section 20F.30.60 of the Community Development Guide was entitled, “Public Hearings and Appeals,” and had nothing to do with historic landmark designations.

15. On June 3, 2003, the City passed Ordinance 2164. That ordinance established a new section in the Community Development Guide providing for historic landmark designations and creating the Historic Landmark Commission. This new section was codified as RCDG 20F.30.60 and the “Public Hearings and Appeals” section was recodified as RCDG 20F.30.65. The reference to RCDG 20F.30.60 in RCDG 20F.20.40-180(1) relating to SEPA appeals was not changed by Ordinance 2164.

16. RCDG 20F.30.65-030 provides that appeals on project permit decisions are to be processed according to the procedures outlined in each of the review types in RCDG 20F.30.30 through 20F.30.60.

### **C. ADEQUACY OF THE ENVIRONMENTAL CHECKLIST AND ENVIRONMENTAL REVIEW**

17. The environmental checklist used for the TMP consists of four parts: Part A - Background; Part B - Environmental Elements; Part C - Signature; and Part D - Supplemental Sheet for Nonproject Actions. Mr. Medeiros and Mr. Kap contended that the environmental checklist was inadequate because (a) the lead agency and the proponent are the same, raising the appearance of a conflict of interest; (b) Questions A7, A8, A9, and A10 in Part A were not adequately answered; (c) All of the questions in Part C of the checklist were answered “n/a;” and (d) the responses on the Supplemental Sheet for Nonproject actions were not adequate.

18. The preparation of the draft TMP was a joint effort of the Planning and Public Works Departments. Under the City’s SEPA regulations, the City’s SEPA Responsible Official for purposes of issuing threshold determinations is the Technical Committee consisting of the Planning Director and Public Works Director. In this case, both the Planning Director and the City Engineer (acting on the Public Works Director’s behalf) reviewed the checklist and the proposed DNS and determined that a DNS was the appropriate threshold determination.

19. The appellants did not provide any evidence of an actual conflict of interest in the manner in which the checklist for the TMP was prepared and reviewed.

The appellants did not cite any provisions of SEPA prohibiting the manner in which the checklist was prepared and reviewed.

20. Question A7 on the checklist asks whether the proponent has any plans for future additions, expansion, or further activity related to or connected with this proposal. The response given on the checklist was “N/A.” The appellants argued that this response was inadequate because the purpose of the TMP was to set the stage for further activity such as implementation of the TMP through road construction.

21. Question A8 on the checklist asks the proponent to list any environmental information that “has been prepared, or will be prepared, directly related to the proposal.” The response given on the checklist was “none.” The appellants argued this was inadequate in that it was inevitable that additional environmental information would have to be prepared in connection with the transportation improvements listed in the TMP.

22. During his testimony, Mr. Marpert explained that Question A8 was answered “none” because the TMP was the document on which the checklist was prepared and he was not aware of any environmental documentation that had been prepared or would be prepared in the future on the TMP itself.

23. Mr. Marpert testified that environmental review had been done on previous planning documents, such as the 1995 Comprehensive Plan, the 1996 update to the Comprehensive Plan, and the 2004 update to the Comprehensive Plan, all of which preceded the TMP and together form the current Comprehensive Plan that the TMP implements. Mr. Marpert also testified that environmental review would be done on the projects in the TMP as they were designed and constructed. However, Mr. Marpert indicated that he did not consider these environmental documents to be directly related to the TMP and therefore answered Question A8 “none.”

24. Question A9 on the checklist asks whether the proponent knows whether any applications are pending for government approvals of other proposals directly affecting the property covered by the proposal on which the checklist is prepared. There was no response given to this question on the checklist. The appellants argued that this was inadequate and that the City should have disclosed applications for development that might construct portions of the transportation projects listed in the TMP. The appellants specifically cited an application for a plat known as Glenshire, which proposed to build a portion of 172nd Avenue NE near their homes.

25. The Glenshire plat application was not filed with the City planning department until after the environmental checklist was prepared and the DNS was issued on the TMP. The appellants did not point to any other application that they believe should have been disclosed.

26. Question A10 on the checklist asks the proponent to list any government approvals or permits that will be needed for the proposal. The response on the checklist

was “none.” The appellants argued that this was incorrect and inadequate because additional approvals will be needed for the individual projects discussed in the TMP.

27. The proposal described in the checklist under the response to Question A11 is “an application to review and approve a new Transportation Master Plan (TMP) which is intended to implement transportation policy as established in the Redmond Comprehensive Plan Transportation Element.”

28. Part B of the checklist addresses sixteen elements of the environment with over eighty questions. The response given to each of these questions on the checklist was “n/a.” The appellants argued that this was inadequate and that the questions should have been answered with respect to the potential impacts of the various transportation projects set forth in the TMP.

29. The questions set forth in Part B of the checklist area almost exclusively site-specific. Since the TMP is a citywide planning document, it is not site-specific. The TMP does, however, contain a description of some transportation projects which the appellants argued should have been considered site-specific. The appellants did not point to any specific information which they believed should have been given in response to any question in Part B of the checklist regarding these projects. Their argument was simply that the City had failed to consider and include any such information that might have been available.

30. The TMP is a non-project action under SEPA and a Supplemental Sheet for Nonproject Actions was therefore filled out and attached to the checklist by Mr. Marpert. The answers on the supplemental sheet were to the effect that the TMP would not affect any of the environmental areas described therein.

31. The appellants argued that the checklist should have contained more information about the environmental impacts of implementing the TMP through construction of the various projects discussed in it. Specifically, the appellants argued that the 172nd Avenue NE Connector described in the TMP would have significant impacts on their neighborhood and that the City should have set forth information in the checklist concerning those impacts and should have considered those impacts in making the threshold determination.

32. In response to the appellants arguments, the City staff contended that the action on which the checklist was prepared was the TMP, that the staff had considered the overall impacts of implementing the TMP on a citywide basis and concluded that the TMP would have a beneficial impact on the environment overall, and that there would be further environmental review of individual projects proposed in the TMP as those projects were designed and constructed.

#### **D. THE 172ND AVENUE NE CONNECTOR**

33. The primary focus of the appellants' appeal was their allegation that the extension of 172nd Avenue NE between NE 122nd and NE 124th as proposed in the TMP would have probable significant adverse environmental impacts. The appellants contended that these impacts required the City to issue a Determination of Significance (DNS) for the TMP and to prepare an Environmental Impact Statement (EIS) for the proposal.

34. One of the core transportation priorities identified by the TMP is the making of connections within Redmond. The purpose of making connections is to provide ways for internal trips within the City to move from neighborhood to neighborhood and from neighborhoods to commercial areas, thereby make circulation easier. By providing missing links at key points in the City's street network, mobility, circulation and access will be enhanced. The making of new connections also promotes transit by allowing for more direct and "time-competitive" routes to popular destinations in Redmond.

35. The January 2005 draft TMP identified five specific new connections to be made within the City as a means of improving connectivity. The number of proposed connections was limited because of the fact that the City is largely built out and only limited opportunities remain for connections to be put through.

36. One of the five new connections proposed in the TMP is to extend 172nd Avenue NE from NE 122nd to NE 124th. Although public right-of-way exists, there is currently no improved roadway segment on 172nd Avenue NE between NE 122nd and NE 124th. The extension proposed in the TMP is described as "a Connector street with a cross section limited to two lanes, except at the intersections with 124th and 116th, where turn lanes may be provided."

37. Although the TMP describes the 172nd Avenue NE Connector as a "new connection," the idea of providing a through street at this location is not new. This extension was first addressed in the North Redmond Neighborhood Plan, adopted as part of the City's 1995 Comprehensive Plan. The extension of 172nd Avenue NE between NE 122nd and NE 124th was shown on the North Redmond Circulation Map adopted as part of the Neighborhood Plan and was specifically discussed in Circulation Policy N-NR-47 in the Neighborhood Plan.

38. The North Redmond Neighborhood Circulation Map was updated as part of the 1996 Redmond Comprehensive Plan Update, but the extension of 172nd Avenue NE between NE 122nd and NE 124th was not changed at that time. The North Redmond Neighborhood Circulation Map continues to show this connection to this day.

39. The TMP provides that all connector streets, including the 172nd Avenue NE connector will have sidewalks on both sides of the street that are separated from vehicle lanes by a buffer strip. Traffic calming and speed reduction measures are to be installed as warranted by adjacent land uses and traffic characteristics and on-street parking is to be allowed where adequate roadway width is available.

40. The Medeiros and Kap families live on 172nd Avenue NE north of NE 124th Street in unincorporated King County. As it abuts their residences, 172nd Avenue NE is paved to a width in excess of that required for two travel lanes, but it has no sidewalks or traffic calming devices. The January 2005 draft TMP did not propose any improvements to 172nd Avenue NE adjacent to the Medeiros and Kap properties or to any other portion of 172nd Avenue NE outside the Redmond City limits.

## **E. NOISE IMPACTS**

41. The segment of 172nd Avenue NE on which the Medeiros and Kap families live currently experiences traffic volumes of approximately 640 average weekday vehicle trips. If the 172nd Avenue NE Connector is built, it is anticipated that traffic volumes will increase to approximately 3000 average weekday vehicle trips.

42. Mr. Medeiros and Mr. Kap each expressed their opinions that this increased traffic would result in a significant adverse noise impact on their neighborhood. One of their expert witnesses, Mr. Speidel, also testified to this opinion.

43. Mr. Cairns, the City staff witness, acknowledged that there would be an increase in noise if the Connector is built and the traffic volumes increase as anticipated. However, Mr. Cairns testified that, in his opinion, the increase would not be a significant adverse environmental impact because the traffic engineering field considers a significant impact needing mitigation to occur only when the traffic volumes that are associated with an arterial or higher classification of street are present.

## **F. SAFETY**

44. The appellants argued that the additional traffic that the 172nd Avenue NE Connector would bring through their neighborhood, coupled with anticipated increased vehicle speed, would endanger pedestrians and vehicles.

45. The existing 172nd Avenue NE north of NE 124th is a paved street with driveways that provide access to several single-family homes. The paved portion of the street is somewhat wider than two standard travel lanes, but there are no sidewalks or other areas dedicated to the exclusive use of pedestrians. School buses stop for children in the area, and those children wait for the buses on the street surface. The speed limit on the street is currently 25 miles per hour.

46. The proposed 172nd Avenue NE Connector improvements stop at NE 124th Street. No specific improvements are proposed for 172nd north of NE 124th and there is no specific plan to extend the sidewalks that will be constructed on the Connector to that portion of 172nd north of NE 124th. The City does have plans to work with King County to do a study of the entire 172nd Avenue NE corridor, but the scope of that study has yet to be determined and it is unknown whether any improvements to 172nd north of NE 124th may be decided upon as part of that corridor study.

47. There are no plans to change the speed limit on 172nd Avenue NE as the result of the Connector being constructed. The speed limit on all segments of 172nd north of 122nd is anticipated to be 25 miles per hour.

48. Mr. Cairns and Mr. Bernstein each offered their opinions as to whether there would be significant vehicular and pedestrian safety impacts as the result of completing the 172nd Avenue NE Connector. Mr. Bernstein offered his opinion that there would be driveway conflicts that could result in a safety impact. Mr. Cairns offered his opinion that significant safety impacts were not likely to occur because of the width of the street and the location of the driveways.

### **G. NEED FOR PROJECT**

49. In their appeal statement, the appellants argued that the 172nd Avenue Connector would have a probable significant environmental impact because there was no need for the project and it does not serve a valuable public purpose.

50. The only evidence presented by the appellants on this point at the hearing was that an alternative to the 172nd Avenue NE Connector is already available by taking 172nd Avenue NE to NE 122nd Street, NE 122nd Street to 162nd Place NE, 162nd Place NE to NE 124th Street, and NE 124th/NE 128th Street back to 172nd Avenue NE.

51. While this route is in existence, it is circuitous and does not provide as direct of a connection as extending 172nd Avenue NE for two blocks between NE 122nd and NE 124th would provide.

### **H. CUT THROUGH TRAFFIC**

52. The appellants argued that if the 172nd Avenue NE Connector is completed, regional trips that currently use the Redmond-Woodinville Road and Avondale Road will divert to the 172nd Avenue NE Connector, causing significant adverse impacts on their neighborhood.

53. Both the Redmond-Woodinville Road and Avondale Road are major arterials that carry regional traffic traveling north and south through the City. These roadways are subject to significant congestion during peak travel hours. Mr. Kap and Mr. Medeiros are concerned that drivers will divert from Redmond-Woodinville Road and Avondale Road to the 172nd Avenue NE Connector during these peak hours in order to avoid the congestion.

54. The TMP describes a connector as providing “direct vehicle, bicycle and pedestrian connections between adjacent neighborhoods, and between neighborhoods and commercial areas. Connectors do not serve trans-regional trips and provide no route continuity beyond the areas they connect.” The result the appellants fear is thus not the intent of the TMP and the 172nd Avenue Connector.



55. The TMP proposes that traffic calming and speed reduction measures be used to discourage regional trips from using connector streets. This requirement to use traffic calming measures on the 172nd Avenue NE Connector is also found in the North Redmond Neighborhood Plan.

56. All parties acknowledged that there will likely be some cut-through traffic that will occur if the 172nd Avenue NE Connector is constructed. Where the parties disagreed was over whether the use of traffic calming measures as proposed in the TMP will reduce this cut-through traffic to a level where significant impacts would not occur. The City has had success in using traffic calming measures to reduce cut through traffic and speeds elsewhere in the City. Mr. Cairns gave his opinion that, based on the City's experience, these measures should be effective in reducing cut-through traffic on 172nd. The Council accepts Mr. Cairns' opinion based on that experience.

### **I. STORMWATER RUNOFF**

57. In their appeal statement, Mr. Kap and Mr. Medeiros argued that the 172nd Avenue NE Connector would have a probable significant adverse impact because it would create additional impervious surfaces that would result in additional stormwater runoff. The appellants presented no evidence on this point in the appeal hearing.

### **J. FAILURE TO CONSIDER ALTERNATIVES**

58. In their appeal statement, Mr. Medeiros and Mr. Kap argued that the City failed to consider possible alternatives, including limitation of right-of-way improvements to emergency and pedestrian access. The only evidence presented on this point during the hearing was Mr. Medeiros' testimony that other streets in North Redmond were gated and used only for emergency access.

### **K. LAND USE**

59. In their appeal statement, Mr. Medeiros and Mr. Kap argued that the 172nd avenue NE Connector would have adverse impacts on land uses in the area. There appellants presented no testimony as to precisely how they believed land uses would be impacted.

60. Mr. Medeiros testified that a land use change from residential to commercial is being considered for some property as part of the North Redmond Neighborhood Plan update currently underway. The proposed land use change is known as the Village Center proposal. That proposal is not part of the TMP, however, and there was no showing that it was dependent upon or related in any way to the 172nd Avenue NE Connector.

## **L. CUMULATIVE IMPACTS**

61. In their appeal statement, Mr. Kap and Mr. Medeiros argued that the 172nd Avenue NE Connector would have significant impacts on NE 124th/NE 128th because of additional traffic that would access these streets from the south.

62. Traffic modeling was done by the City staff in order to determine the impact of routing traffic through the south leg of the intersection of 172nd Avenue NE and NE 124th Street. This modeling showed that without the 172nd Avenue NE Connector, this leg of the intersection would operate at Level of Service (LOS) A in the year 2022 with an average delay of 7 seconds per vehicle. With the 172nd Avenue Connector, this leg of the intersection would operate at Level of Service B in the year 2022 with an average delay of 11 seconds. This level of service would be consistent with and not violate King County's concurrency standards for this intersection.

63. Although concerns were expressed by the appellants' witnesses about the design of the intersection at 172nd Avenue NE/NE 128th Street and its relation to driveways in the vicinity, Mr. Cairns' opinion was that there were no significant safety issues created by those relationships. The appellants did not present evidence as to any specific driveway or sight-distance problems.

## **M. AESTHETICS**

64. In their appeal statement, Mr. Kap and Mr. Medeiros argued that trees and other vegetation would be removed in order to construct of the 172nd Avenue NE Connector and that this would adversely impact public and private views and landscapes.

65. The undeveloped right-of-way for 172nd Avenue NE between NE 122nd and NE 124th is currently treed and vegetated. Construction of the Connector will require the removal of some trees and vegetation along the route.

## **N. PROPERTY VALUES**

66. In their appeal statement, Mr. Kap and Mr. Medeiros argued that the 172nd Avenue NE Connector will reduce property values for homes north of the extension. Both Mr. Medeiros and Mr. Kap gave their opinions during the testimony that their properties would be devalued. No testimony was presented on property values other than these opinions.

## **O. NOTICE**

67. In the appeal statement, the appellants argued that they should have been given individual notice of the TMP and the threshold determination. They also argued that the notice that was given was defective.

68. No individual notice of the TMP or the threshold determination was given to any property owner. The City did not publish notice of the DNS for the TMP at the time it was issued on March 4, 2005. After Mr. Kap and Mr. Medeiros submitted their initial appeal on April 1, 2005, the City staff took steps to have the DNS published. Publication occurred on April 21, 2005.

## **P. INCORPORATION OF CONCLUSIONS**

69. In the event that any conclusion set forth below is more properly deemed a finding, the City Council hereby incorporates it as such.

## **II. CONCLUSIONS**

### **A. JURISDICTION**

1. In deciding the motion on jurisdiction raised by the appellants, the Council must choose between two alternative constructions of RCDG 20F.20.40-180(1), which provides that SEPA appeals are to follow “the procedures set forth in RCDG 20F.30.60, Appeals.” Under the construction urged by the appellants, the Council must read the SEPA appeals section literally, ignore the recodification of the appeals section that was in effect when RCDG 20F.20.40-180(1) was enacted, and apply the appeal procedures for Type VII landmark designation decisions to a SEPA appeal decision on the Type VI tmp adoption action. Under the construction urged by the City staff, the Council must construe the failure to change the reference in 20F.20.40-180(1) at the time RCDG 20F.30.60 was recodified to RCDG 20F.30.65 as inadvertent and apply the Type VI review procedures to a SEPA appeal on the Type VI TMP adoption action.

2. The Redmond City Council must construe the Community Development Guide in a logical manner and so as to avoid absurd results. Construing RCDG 20F.20.40-180(1) in the manner urged by the appellants would be in direct conflict with the provisions of the recodified RCDG 20F.30.65-030, which requires all SEPA appeals to be heard under the procedures that apply to the underlying permit or approval. Construing RCDG 20F.20.40-180(1) in the manner urged by the City staff would be to construe that section and RCDG 20F.30.65-030 to be harmony. The Council will therefore choose the latter course. The Redmond City Council has jurisdiction to hear this appeal and the Redmond Hearing Examiner does not.

### **B. ADEQUACY OF ENVIRONMENTAL CHECKLIST AND ENVIRONMENTAL REVIEW**

3. SEPA requires that when a government agency initiates a proposal, it is the lead agency for that proposal for SEPA purposes. Here the TMP was a joint effort of the Planning and Public Works Departments and the SEPA Responsible Official is the Technical Committee composed of the heads of those two departments. There is nothing in SEPA which prohibits the procedure used by the City to fill out and review the checklist and to issue the DNS. The appellants presented no evidence of any actual

conflict of interest on the part of anyone involved. The Council concludes that there was no procedural error in the processing of the checklist and DNS.

4. In determining whether the environmental checklist was adequate, the Council must consider whether the information available was reasonably sufficient to evaluate the environmental impacts of the proposal and whether there was any lack of material disclosure that resulted in issuance of the DNS. Although the responses in the checklist could have been elaborated on, the appellants did not prove that there were any material facts or environmental impacts of the proposal that were left off the checklist. The appellants failed to meet their burden of proving that the checklist was inadequate.

5. The action on which the environmental checklist was prepared was the Transportation Master Plan. The TMP is a primarily a policy and planning document, but it does contain a list of projects that the TMP proposes as a means of implementing those policies and plans. The appellants are correct that in conducting environmental review of the TMP, the City's SEPA Responsible Official must consider not only the impacts of the TMP adoption itself, but must also consider, on a citywide basis, the impacts that implementing the TMP will have. However, appellants are not correct when they argue that detailed environmental review must be conducted on each and every project listed in the TMP at this time. SEPA allows for such detailed review to take place at the project-specific level and does not require that it occur with every non-project action.

6. The three year priority action plan set forth in the January 2005 draft TMP provides for a project development stage in which detailed project design will occur and in which additional environmental studies will be conducted. This is an appropriate phased approach to environmental review and ensures that further environmental study concerning 172nd Avenue NE Connector will occur at that time. The fact that the City did not conduct a project-specific environmental review for the 172nd Avenue NE Connector before it issued the DNS on the TMP is not grounds for overturning the DNS.

### **C. SEPA STANDARD OF REVIEW**

7. The relief requested by Mr. Medeiros and Mr. Kap in these proceedings is the reversal of the DNS and the preparation of an EIS. Under SEPA, an EIS is required only for proposals that will have a probable significant adverse environmental impact. Thus, in order to grant the relief requested by the appellants, the City Council must conclude that adoption and implementation of the TMP will result in a probable significant adverse impact on the environment.

8. A person challenging the issuance of a DNS must show that the decision of the City's SEPA Responsible Official to issue that DNS was "clearly erroneous." The appellants thus bear the burden in these proceedings of presenting sufficient evidence to leave the City Council with the definite and firm conviction that the Responsible Official was mistaken in issuing the DNS. The Council must give the decision of the Responsible Official substantial weight.

#### **D. NOISE IMPACTS**

9. There will certainly be increased noise in the appellants' neighborhood if the 172nd Avenue NE Connector is constructed and the expected traffic volume increases occur. For purposes of this appeal, however, the question is whether that increased noise will cause a significant adverse environmental impact, which SEPA defines as meaning a reasonable likelihood of more than moderate adverse impact on environmental quality.

10. The appellants did not present any demonstrable evidence of the magnitude of the noise increase that would occur as the result of the increased traffic. The Council is therefore unable to conclude that the increase would be "significant" as SEPA defines that term. Other residential streets within the City have similar traffic flows and no evidence was presented that the noise on those streets created any significant degradation of environmental quality. The appellants failed to meet their burden of proving a probable significant adverse noise impact as the result of the adoption or implementation of the TMP.

#### **E. SAFETY**

11. The appellants did not present any demonstrable evidence that vehicular or pedestrian safety will be compromised by adoption of the TMP or by implementing the TMP through the construction of the 172nd Avenue NE Connector. The speed limit on the street in front of the Kap and Medeiros residences will not change. The opinion of the City's traffic engineer, Mr. Cairns, was that potential driveway conflicts would not result in a significant safety impact, given the width of the 172nd in this area and the location of the driveways. The appellants failed to meet their burden of proving a probable significant adverse safety impact as the result of the adoption or implementation of the TMP.

#### **F. NEED FOR PROJECT**

12. Whether the TMP and the 172nd Street Connector serve a valuable public purpose is not a SEPA issue but is an issue of public policy. SEPA contemplates that such public policy considerations will be taken into account by the City Council in making final decisions to approve the TMP or to authorize construction of the Connector, but SEPA does not require these non-environmental decisions to be analyzed as part of the environmental review process.

#### **G. CUT-THROUGH TRAFFIC**

13. The appellants did not prove that the traffic calming measures proposed for the 172nd Avenue NE Connector would be ineffective to the extent that cut-through traffic will be likely to have a probable significant adverse impact on 172nd north of NE 124th.

14. The only specific evidence in the record on the traffic volumes that are anticipated to occur on the 172nd Avenue Connector is the figure given by the City staff of 3000 vehicles per day. While the appellants contended that this figure was probably low because of the larger amount of cut-through traffic they believed would occur, they did not offer any specific evidence of what that anticipated larger volume would be. Without such specific evidence, the Council cannot conclude that cut-through traffic will be likely to cause significant adverse environmental impacts. The appellants did not meet their burden of proof.

## **H. STORMWATER RUN-OFF**

15. Because no specific evidence was offered concerning stormwater during the hearing, the Council concludes that the issue was abandoned. If it was not abandoned, then the appellants failed to meet their burden of proving a probable significant adverse impact from stormwater.

## **I. CONSIDERATION OF ADDITIONAL CONDITIONS OR ALTERNATIVES**

16. The appellants failed to show how restricting the 172nd Street Connector to emergency vehicle or pedestrian access is a reasonable alternative that should have been considered. The purpose of having a connection is to provide for the circulation of trips between neighborhoods and between neighborhoods and commercial areas. Restricting the Connector to emergency vehicles or pedestrian access would not attain the purpose of the connection and is therefore not a reasonable alternative.

## **J. LAND USE**

17. The appellants failed to meet their burden of showing any probable significant adverse impact on land use as the result of adoption of the TMP or of the TMP's implementation through construction of the 172nd Avenue NE Connector. There was no evidence presented that showed such an impact.

## **K. CUMULATIVE IMPACTS**

18. The appellants failed to prove any significant impacts on NE 124th/128th as the result of additional traffic accessing these streets from the 172nd Avenue NE Connector. The level of service at the intersection of 172nd Avenue NE and NE 128th does not degrade significantly as the result of the additional traffic and LOS B does not violate County standards. No probable significant adverse impact on safety on NE 124th/128th was proven.

## **L. AESTHETICS**

19. The appellants failed to prove any significant impacts on aesthetics as the result of adoption of the TMP or implementation of the TMP through construction of the

172nd Avenue NE Connector. Although there will be some aesthetic difference as the result of tree and vegetation removal, this is the case with any construction. There was no proof that the impact on aesthetics would be a significant adverse one.

#### **M. PROPERTY VALUES**

20. There was no proof that property values along 172nd would diminish as the result of adoption of the TMP or implementation of the TMP though construction of the 172nd Avenue NE Connector. Although Mr. Kap and Mr. Madeiros were of this opinion, no expert testimony from any real estate professional to this effect was provided. Without expert opinion as to property values, the Council cannot conclude that there will be a significant impact as the result of the TMP or the construction of the 172nd Avenue NE Connector.

#### **N. NOTICE**

21. The TMP is a non-project action under SEPA. SEPA does not require individual notice to property owners when a threshold determination is issued on a non-project action. Redmond's SEPA regulations do not require individual notice for such actions either. The fact that the City did not provide individual notice of the TMP or the DNS for the TMP to Mr. Kap, Mr. Medeiros, or anyone else is thus not grounds for overturning the threshold decision and granting the appellants the relief they seek.

22. SEPA and the City's SEPA regulations do require the DNS to be published. The City erred when it did not publish the DNS at the time it was issued on March 4, 2005. However, this error was corrected when the City did publish the DNS on April 21, 2005. The error in not publishing the DNS sooner was therefore corrected and the appellants did not show any prejudice from the error at the hearing.

#### **O. INCORPORATION OF FINDINGS**

23. In the event any finding set forth above is more properly deemed to be a conclusion, the City Council hereby incorporates it as such.

### **III. DECISION**

For all of the reasons set forth above, the appeal of Mr. Medeiros and Mr. Kap must be denied. The appellants have not met their burden in these proceedings and the City Council is not left with the definite and firm conviction that the Responsible Official made a mistake in issuing the DNS. The appellants did not show that the environmental checklist was inadequate or that the City failed to consider and evaluate the impacts of the TMP or the projects that implement of the TMP. The appellants did not prove that adoption of the TMP or the construction of the 172nd Avenue NE Connector would result in any probable significant adverse environmental impact. The appeal is therefore denied.

ADOPTED by the Redmond City Council this \_\_\_\_ day of \_\_\_\_\_,  
2005.

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Nancy McCormick, Council President